

MF 97-4

Tax Type: MOTOR FUEL TAX

Issue: Motor Fuel Use Tax On Purchase of Special Fuels

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Petitioner)	No.
)	
v.)	IBT No.
)	
TAXPAYER,)	Linda K. Clifffel,
Taxpayer)	Admin. Law Judge
)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: George A. Hesik of George A. Hesik & Associates, Ltd. for taxpayer; Alan Osheff, Special Assistant Attorney General, for the Illinois Department of Revenue.

SYNOPSIS: Truck Leasing Company (hereinafter "TAXPAYER" or "taxpayer") was issued a Notice of Tax Liability (960045930100) on February 6, 1996 for motor fuel use tax for the period beginning third quarter 1992 and ending fourth quarter 1993. Taxpayer protested the Notice of Tax Liability ("NTL") on February 23, 1996.

The issue presented for review is whether the taxpayer has overcome the *prima facie* correctness of the NTL through the submission of evidence associated with its own books and records.

On consideration of this matter it is my recommendation that this matter be resolved in favor of the Department with modifications being made to the NTL as noted below.

FINDINGS OF FACT:

1. TAXPAYER is in the business of leasing trucks. (Tr. p. 55)
TAXPAYER's fleet fluctuated between 20 and 30 trucks. (Tr. pp. 20-21)
2. TAXPAYER did not operate the trucks that used the fuel for which the tax was assessed. (Tr. p. 55)
3. The auditor used a statistical sample of five trucks to arrive at the audit results. The test trucks were Units 11003, 11005, 11006, 17910 and 19015. (Tr. pp. 13-16)
4. The lease between Auto Club Trucking, Inc. and TAXPAYER included Unit 19015, one of the sample trucks. The term of the lease was 52 weeks. The lease also specified that TAXPAYER would file the applicable motor fuel tax returns. (Taxpayer Ex. No. 5)
5. TAXPAYER, president of TAXPAYER Trucking, testified that all of the leases entered into by TAXPAYER were for a period of one year or more. (Tr. p. 85)
6. Mr. TAXPAYER testified that TAXPAYER did not purchase the fuel for the trucks leased to Auto Club Trucking, Inc. (Tr. p. 59)
7. Auto Club Trucking failed to provide TAXPAYER with the fuel receipts for the fuel it purchased, nor did it pay all of the rent as required under the lease. (Tr. pp. 66-67)

CONCLUSIONS OF LAW:

The primary issue in this case is whether the taxpayer is subject to the Motor Fuel Use Tax on the trucks it leases. The statute provides: "[a] tax is hereby imposed upon the use of special

fuel upon highways of this State by commercial motor vehicles." Ill. Rev. Stat. 1991, ch. 120, ¶429a.¹

According to Ill. Rev. Stat 1991, ch. 120, ¶429a4,²

[T]he Department shall, by regulation, provide for the allocation between lessors and lessees of the same commercial motor vehicle or vehicles of the responsibility as a motor carrier for the reporting of mileage and the liability for tax arising under Section 13a.3 of this Act, and for registration, furnishing of bond, carrying of motor fuel tax licenses and display of identification cards under this Section, and for all other duties imposed upon motor carriers by this Act.

Regulation Section 500.175(b),³ states:

b) Leased Commercial Motor Vehicles

2) Allocation of responsibility to avoid duplicate reporting of mileage and payment of tax.

A) Where the term of a lease is 30 days or more, the lessee of a commercial motor vehicle shall be responsible for the reporting of mileage and the liability for the tax arising under Section 13a.3 of the Motor Fuel Tax Law, and for registration, furnishing of bond, carrying of identification cards, and external motor fuel decals under Section 13a.4 of the Motor Fuel Tax Law and for all other duties imposed by Section 13a, 13a.1, 13a.2, 13a.3, 13a.4 and 13a.5 of the Motor Fuel Tax Law.

B) Where the term of a lease is less than 30 days, the lessor of a commercial motor vehicle shall be responsible for the reporting of mileage and the liability for tax arising under Section 13a.3 of the Motor Fuel Tax Law, carrying of identification cards, and external motor fuel decals under Section 13a.4 of the Motor Fuel Tax Law and for all other duties imposed by Sections 13a, 13a.1, 13a.2,

¹ The statute in effect during the audit period. The current statute is found at 35 ILCS 505/13a.

² The statute in effect during the audit period. The current statute is found at 35 ILCS 505/13a.4.

³ The regulation in effect during the audit period.

13a.3, 13a.4 and 13a.5 of the Motor Fuel Tax Law.

The regulation in effect for the relevant period looks to the term of the lease to determine who is responsible for the reporting of mileage and the liability for the Motor Fuel Use Tax. Where leases are for a term of more than 30 days, the lessee has the responsibility of reporting the mileage and has the liability for the tax.

Taxpayer introduced into evidence a lease with Auto Club Trucking, Inc. which included one of the sample trucks, Unit 19015. This lease had a lease term of 52 weeks. Taxpayer's president, TAXPAYER, testified that all of TAXPAYER's leases were for a term of one year or more.

After the Department has introduced its *prima facie* case, the burden of proof shifts to the taxpayer. The taxpayer must produce competent evidence identified with its books and records showing that the corrected returns are incorrect. Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978) The evidence presented must be consistent, probable and identified with taxpayer's books and records. A.R. Barnes, Inc. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988) Taxpayer introduced only one lease, for seven trucks, to show that the terms of the leases were greater than 30 days. Taxpayer could easily have produced copies of all of the leases to prove the lease terms, since taxpayer as lessor would certainly have those documents in its possession. In failing to produce the relevant leases, taxpayer has failed to rebut the Department's *prima facie* case, with the exception of that portion of the assessment relating to Unit 19015.

In its post-hearing brief, taxpayer has requested an additional period of time to produce the relevant leases. The Department's hearing rules are clear: evidence may only be submitted in the course of and on the date set for hearing. 86 Admin. Code ch. I, Section 200.155(f). Taxpayer has provided no reasonable explanation for why the leases were not produced at hearing, and inasmuch as these documents should be in the control of taxpayer, the record must remain closed.

At hearing, the Department first raised an issue by means of a Motion to Dismiss regarding whether taxpayer had agreed to the audit by signing a corrected return, and consequently, was not entitled to an administrative hearing. On conclusion of the audit, a Notice of Tax Liability was issued in this case. Whenever a NTL is issued, the taxpayer may protest its issuance and seek an administrative hearing. Ill. Rev. Stat 1991, ch. 120, ¶443. Taxpayer's protest of the NTL was timely, and therefore its protest is properly before the Administrative Hearings Division.

WHEREFORE, based on my examination of the record and for the reasons stated above, it is my recommendation that the Notice of Deficiency be allowed, but be recalculated on the basis of the sample now consisting of four trucks: Units 11003, 11005, 11006 and 17910.

Date: _____

Linda K. Clifffel
Administrative Law Judge